

Application Serial No. 10/777,267  
Reply to Office Action dated March 7, 2005

### REMARKS/ARGUMENTS

Initially, the Applicant would like to thank Examiner El Arini for taking the time to discuss this case with the Applicant's representative during the telephone interview conducted on June 1, 2005. During the interview, it was agreed that the phrase "the steps of" would be added to the preamble of claims 1 and 10 to overcome the formal rejections presented on page 4 of the Office Action. With respect to the restriction requirement, the Applicant respectfully submits that claims 1-15 directed to a method of performing a washing operation and claims 16-20 directed to a dishwasher, while being distinct from each other, would not present an undue burden on the Examiner to search. That is, the apparatus described in claim 16 practically mirrors the steps set forth in claims 1 and 10. For example, claim 16 requires means for filling a washing chamber to a first level; causing the wash fluid to fall to a second level; means of refilling to the first level; and means for varying trajectories of jets of washing fluid. Based on these clear similarities, it is respectfully submitted that a complete search for the method claims would encompass the search for the apparatus claims. To this end, reconsideration and withdrawal of the restriction requirement is requested.

In general, the invention is directed to a method of performing a washing operation in a dishwasher including filling a washing chamber with a washing fluid to a first level, initiating operation of a pump assembly causing the washing fluid to fall to a second level in the washing chamber, spraying jets of washing fluid from at least one spray arm onto kitchenware, and causing washing fluid to rise back to the first level in order to dislodge food and soil particles clinging to internal surfaces of the washing chamber. Claims 1 and 10 also require varying trajectories of the jets of washing fluid in order to create a random spray pattern directed onto the internal surfaces of the dishwasher. That is, the present invention is primarily concerned with dislodging food and soil particles that cling to internal surfaces of the dishwasher, particularly the internal surfaces adjacent to the first level.

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Initially, it should be noted that none of the prior art presented by the Examiner is directed to, or in any way discusses, cleaning internal surfaces of a washing chamber, let alone specifically directing jets of washing fluid onto internal surfaces at or about a specified portion of the washing chamber at which washing fluid is filled to a first level. Recognizing this deficiency, the Examiner has applied three references, in three separate § 102 rejections, arguing that each reference teaches a dishwasher that operates in a manner that may cause washing fluid to be filled to a first level, lowered to a second level and returned back to the first level in order to dislodge food and soil particles and, that the references may teach varying trajectories of jets of washing fluid in order to create a random spray pattern directed onto the internal surfaces of the dishwasher at the area of the first level. More specifically, the Examiner, recognizing that none of the prior art relied upon for her rejections explicitly discloses the particulars of the present application, argues that the limitations contained in claims 1-15 are inherently performed by these references. According to § 2112, subparagraph 4 of the M.P.E.P., the fact that a certain result or characteristic may occur or be present in the prior art is "not sufficient to establish the inherency of that result or characteristic." In order to establish inherency, the extrinsic evidence must make it clear that the missing matter is necessarily present in the reference and that it would be so recognized by persons of ordinary skill in the art. Inherency may not be established by mere probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.

On page 4 of the Office Action, the Examiner rejected claims 1-15 under 35 U.S.C. § 102(b) as being anticipated by Springer (U.S. Patent No. 5,494,062). Springer is directed to an electromechanical controller for a dishwasher having alternating flow. That is, a controller alternates a flow of washing fluid between a lower wash arm 22 and an upper wash arm 20. When switching between wash arms 20 and 22, a pump 16 is paused twice, once for one second and once for seven seconds. Stopping pump 16 permits a check ball to change positions to allow fluid to switch between wash arms 20 and 22. The Applicant respectfully submits that pausing a pump for this short a time period to switch between wash arms would not allow washing fluid to return to an initial fill level in a washing chamber. In addition, there is simply no disclosure in Springer to

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varying trajectories of washing fluid in such a manner to cause random jets of washing fluid to impinge upon internal surfaces of the washing chamber at a first fill level.

Next, the Examiner rejects claims 1-15 under 35 U.S.C. § 102(b) as being anticipated by Milocco et al. (U.S. Patent No. 5,525,161). Milocco et al. describes an operational process for a dishwashing machine where washing fluid is first filled to a first level L, after which the washing fluid is caused to drop to a level H. When wash pump 15 is paused, the water returns to level L in the washing chamber. When pump 15 is initially activated, and the washing fluid begins to lower to level H, spray nozzles 13 and wash arm 8 are supplied with water at a highest pressure. Spray nozzles 13 are directed upward such that, during periods of highest pressure, washing water jets 5 flowing out of the spray nozzles 13 are acting with their highest pressure, and in a variable way, on a relatively concentrated zone of items in the wash load. That is, the only time in which varying jets is discussed is with reference to concentrating the jets on washing items. In addition, a review of the figures in this case reveals that, at no point, can the jets of washing fluid, no matter how operated, be directed onto internal surfaces of the washing chamber at level L (see particularly Figure 1). Accordingly, Applicant respectfully submits that the Milocco et al. reference does not anticipate the claims of the present invention.

In a third attempt to meet the claims of the present application, the Examiner has rejected claims 1-15 under § 102(e) as being anticipated by Rappette (U.S. Patent Application Publication No. 2004/0045586). Initially it should be noted that, like the other applied references, Rappette is not at all concerned with washing internal surfaces of a washing chamber. Rappette teaches a dishwasher having stop and start wash cycles wherein the stop/start sequence includes steps of pausing operation of the wash pump and operating the wash pump to circulate wash water in the dishwasher. The steps of pausing and operating the wash pump are repeated a number of times (twice). Paragraph 29 describes a pump step 65 that occurs after the step of pausing. During pump step 65, a surge of washing water is sent to spray arms 22, 24 and 34 to provide extra scrubbing energy to dislodge soil particles present on ware being washed in the dishwasher. The

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pressure of the surge is at no time varied and is not at all designed to impact specified internal surfaces of the washing chamber, let alone at a specified fill level as claimed. Applicant submits that this statement actually teaches away from the present invention in that, by providing a surge of washing fluid, there could be no varying trajectories of the jets of washing fluid that would impact internal surfaces of the washing chamber at the specified fill level.

Finally, the Examiner rejects claims 1-15 under 35 U.S.C. § 103(a) as being unpatentable over Wyman (UK Patent No. 2,221,384). Wyman is directed to an automatic dishwasher which includes a washing cycle having alternating periods of high and low jet strength. The periods of low jet strength are stated to give rise to less acoustic noise from the dishwasher. While the jet strength is described as being varied by regulating pump speed, operating a solenoid-controlled valve that regulates a flow of washing fluid to jet orifices, or by employing either one of two sets of jet orifices of differing size, there is simply no discussion directed to varying the trajectories of the washing fluid jets so as to impact internal surfaces of a dishwasher at an initial fill level. In addition, at no point in the Wyman reference is there any discussion directed to filling the dishwasher to an initial level, subsequently causing that level to fall to a second, lower level, and thereafter returning the water to the initial fill level.

Based on the above, it is respectfully submitted that the prior art relied upon by the Examiner fails to teach the broader limitations contained in claims 1 and 10, let alone the more specific limitations presented in dependent form. For instance, none of the references teach gradually increasing a pressure of the washing fluid directed to the spray arm in order to direct the washing fluid onto the internal surfaces as required by claim 5, defining the internal surfaces as including a front lip of the tub as required by claims 6 and 12, or defining the internal surfaces of the tub as including lower corner portions of the tub as required by claims 7 and 13.

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In view of the above remarks and amendments to the claims, it is respectfully submitted that the invention is clearly patentably defined over the prior art such that allowance of all claims and passage to issue are requested. If the Examiner should have any additional concerns regarding this application, she is cordially invited to contact the undersigned at the number provided below if it would further expedite the prosecution of the application.

Respectfully submitted,



Everett G. Diederiks, Jr.  
Attorney for Applicant  
Reg. No. 33,323

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**DIEDERIKS & WHITELAW, PLC**  
12471 Dillingham Square, #301  
Woodbridge, VA 22192  
Tel: (703) 583-8300  
Fax: (703) 583-8301